

Division of Securities  
Utah Department of Commerce  
160 East 300 South, 2<sup>nd</sup> Floor  
Box 146760  
Salt Lake City, UT 84114-6760  
Telephone: (801) 530-6600  
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**BEFORE THE DIVISION OF SECURITIES  
OF THE DEPARTMENT OF COMMERCE  
OF THE STATE OF UTAH**

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**IN THE MATTER OF:**

**FRANK J. GILLEN;**

**Respondent.**

**ORDER TO SHOW CAUSE**

**Docket No. SD-07-0009**

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It appears to the Director of the Utah Division of Securities (Director) that Frank J. Gillen (Respondent) may have engaged in acts and practices that violate the Utah Uniform Securities Act, Utah Code Ann. § 61-1-1, et seq. (the Act). Those acts are more fully described herein. Based upon information discovered in the course of the Utah Division of Securities' (Division) investigation of this matter, the Director issues this Order to Show Cause in accordance with the provisions of § 61-1-20(1) of the Act.

## **STATEMENT OF JURISDICTION**

1. Jurisdiction over the Respondent and the subject matter is appropriate because the Division alleges that Respondent violated §§ 61-1-1(2) (Securities Fraud) and 61-1-1(3) (Fraudulent Practices) of the Act, while engaged in the offer and sale of securities in or from Utah.

## **STATEMENT OF FACTS**

### **THE RESPONDENT**

2. Frank J. Gillen (Gillen) currently resides in San Diego County, California, but all times relevant to the matters asserted herein, Gillen was a resident of Utah and lived in Salt Lake County.

### **GENERAL ALLEGATIONS**

3. On April 27, 2005, Gillen solicited an investor, L. J., by e-mail, about an investment in Garb Oil & Power Corporation (Garb Oil<sup>1</sup>).
4. In the e-mail, Gillen told L. J. that Garb Oil had a contract to ship steel from Russia to China.
5. Gillen also said he had purchased a block of 1.7 million shares of Garb Oil (Garb Stock) on April 25, 2005, for \$.07, and that the price of the stock had already increased to \$.14-

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<sup>1</sup> Garb Oil & Power Corporation is a publicly-traded Utah corporation.

- 17; that he was going to purchase another block of one million shares of Garb Stock, and would start selling it.
6. Gillen told L. J. he would sell the Garb Stock through Danube Investment Group, and he expected to recoup all of his (Gillen's) principal.
  7. Gillen said he would split evenly with L. J., any profit Gillen received from the sale of the Garb Stock.
  8. Gillen told L. J. the Garb Stock sold for \$5 to \$6 per share 15 years ago, and that Gillen believed he and L. J. would do well selling the Garb Stock.
  9. Gillen told L. J. he could accept no more than a \$50,000 investment.
  10. L. J. asked Gillen if he was licensed to sell securities, and Gillen told L. J. he did not need to be licensed to buy a block of stock.
  11. On April 28, 2005, L. J. invested \$30,000 with Gillen, giving him two personal checks. One check was for \$20,000 and the other was for \$10,000. Both were made payable to Gillen, and were mailed to Gillen at his home address in Salt Lake County.
  12. After investing, Gillen told L. J. to open an account at Alpine Securities so Gillen could transfer shares of the Garb Stock to L. J.'s account.
  13. According to Gillen's instructions, L. J. opened an account at Alpine Securities on July 12, 2005, but Gillen failed to transfer the shares to L. J.'s account.

14. Gillen later told L. J. that the reason he failed to transfer the shares into L. J.'s account was because he had a falling out with someone at Alpine Securities. Gillen told L. J. to open an account at Wilson-Davis.
15. Once again, according to Gillen's instructions, L. J. opened an account at Wilson-Davis on August 30, 2005. However, Gillen again failed to transfer the shares to L. J.'s account.
16. Gillen later told L. J. the reason he did not transfer L. J.'s shares into L. J.'s Wilson-Davis account was because Gillen had suffered losses with his "Homenet" stock, and that by keeping all of the shares of Garb Oil in his account, Gillen could offset his losses in "Homenet" with any capital gains realized with the Garb Stock.
17. Approximately two weeks later, Gillen told L. J. that another investor (Investor), was holding L. J.'s shares.
18. L. J. asked Gillen if Investor knew he was holding L. J.'s shares of the Garb Stock, and Gillen said yes.
19. L. J. contacted Investor, but Investor denied holding L. J.'s shares of Garb Stock.
20. Investor told L. J. that Investor had also invested in Garb Oil, and that Investor was holding two Garb Oil promissory notes as collateral for that investment.
21. L. J. confronted Gillen with what Investor told him.

22. Gillen promised to transfer a Garb Oil promissory note (Garb Note) he was holding into L. J.'s name, as security for his investment. Gillen told L. J. the Garb Note was worth \$30-35,000.
23. L. J. called John Brewer (Brewer), the president of Garb Oil, to verify the value of the Garb Oil note.
24. On March 30, 2006, Brewer told L. J., by e-mail, that the Garb Note Gillen had promised to transfer to L. J.'s account was worth only about \$11,000 instead of the \$30-35,000 represented by Gillen.
25. On March 31, 2006, L. J. wrote a letter to Gillen, recounting his conversation with Brewer, and complaining about how Gillen handled L. J.'s investment.
26. On April 5, 2006, Gillen gave L. J. a document entitled "Assignment of Promissory Note," stating that Gillen was assigning Gillen's portion of the Garb Note, valued at approximately \$11,000, to L. J.
27. On or about June 5, 2006, Gillen gave L. J. a cashier's check for \$12,363 from monies he received from the Garb Note.
28. On or about November 30, 2006, Gillen gave L. J. a promissory note in the amount of \$21,000. The note matured on June 30, 2007, included interest of \$2,100, and was signed by Gillen.

29. Despite several demands, L. J. has received no additional payments of principal or interest from his \$30,000 investment with Gillen. L. J. is owed \$17,637 in principal alone.

### **CAUSES OF ACTION**

#### **COUNT I**

#### **Securities Fraud under § 61-1-1(2) of the Act**

30. The Division incorporates and re-alleges paragraphs 1 through 29.
31. The investment contract and interest in a promissory note offered and sold by Gillen are securities under § 61-1-13 of the Act.
32. In connection with the offer and sale of a security to L. J., Gillen made false statements, including, but not limited to, the following:
- a. That on April 25, 2005 he purchased 1.7 million shares of Garb Stock for \$.07 per share. In fact, Gillen purchased only \$150,000 shares at \$.04 per share;
  - b. That after Gillen purchased 1.7 million shares of Garb Stock (in April 2005) the price increased to \$.14-.17. In fact, in April 2005, Garb Stock never sold for more than \$.10;
  - c. That Garb Oil obtained a contract to ship steel from Russia to China;
  - d. That Gillen was going to purchase another block of one million shares of Garb Stock;

- e. That Gillen would recoup all of Gillen's principal invested in Garb Stock after reselling the stock; and
  - f. That Gillen would resell the Garb Stock through Danube Investment Group. In fact, Danube Investment Group was not a licensed broker-dealer then, and is not a licensed broker-dealer now.
33. In connection with the offer and sale of a security to L. J., Gillen failed to disclose material information, including, but not limited to, the following, which was necessary in order to make representations made not misleading:
- a. That Gillen was investigated by the SEC in 1997, and by the NASD in 1999 and 2000, in connection with the sale of stock, and was aware of all three investigations;
  - b. That in 2002, the NASD fined Gillen \$25,000 for selling unregistered securities;
  - c. That in 2003, the NASD revoked Gillen's securities license due to unpaid fines;
  - d. Some or all of the information typically provided in an offering circular or prospectus regarding Garb Oil, such as:
    - i. The business and operating history for Garb Oil;
    - ii. Identities of Garb Oil's principals along with their experience in this type of business;
    - iii. Garb Oil's financial statements;
    - iv. What product Garb Oil sells, and the market for that product;

- v. The nature of the competition for the product;
- vi. Current capitalization of the issuer;
- vii. A description of how the investment would be used by the company;
- viii. The track record of the company to investors;
- ix. Risk factors for investors;
- x. The number of other investors;
- xi. The minimum capitalization needed to participate in the investment;
- xii. The disposition of any investments received if the minimum capitalization were not achieved;
- xiii. The liquidity of the investment;
- xiv. Discussion of pertinent suitability factors for the investment;
- xv. The proposed use of the investment proceeds;
- xvi. Any conflicts of interest the issuer, the principals, or the agents may have with regard to the investment;
- xvii. Agent commissions or compensation for selling the investment;
- xviii. Whether the investment is a registered security or exempt from registration; and
- xix. Whether the person selling the investment is licensed.

34. Based upon the foregoing, Frank J. Gillen willfully violated § 61-1-1(2) of the Act.

**COUNT II**  
**Fraudulent Practices under § 61-1-1(3) of the Act**

35. The Division incorporates and re-alleges paragraphs 1 through 29.
36. Gillen engaged in acts, practices, or courses of business that operate or would operate as a fraud or deceit on L. J., including, but not limited to, the following:
- a. Telling L. J. to open an account at Alpine Securities so Gillen could transfer shares of Garb Stock to L. J.'s account;
  - b. Telling L. J. to move his account from Alpine Securities to Wilson-Davis because Gillen had a falling out with someone at Alpine Securities;
  - c. Telling L. J. that he (Gillen) had not transferred L. J.'s shares to L. J.'s Wilson-Davis account because Gillen suffered losses with his "Homenet" stock, and by keeping all of the shares of Garb Oil in Gillen's account, Gillen would offset his "Homenet" losses with capital gains realized from the Garb Stock;
  - d. Telling L. J. that a different investor was holding L. J.'s shares; and
  - e. Telling L. J. that Gillen was willing to transfer a promissory note from Garb Oil into L. J.'s name, and that the Garb Note was worth \$30-35,000.
37. Based upon the foregoing, Frank J. Gillen wilfully violated § 61-1-1(3) of the Act.

**ORDER**

The Director, pursuant to § 61-1-20 of the Act, hereby orders the Respondent to appear at a formal hearing to be conducted in accordance with Utah Code Ann. §§ 63-46b-4 and 63-46b-6 through -10, and held before the Utah Division of Securities. The hearing will occur on March

22, 2007, at 9:00 a.m., at the office of the Utah Division of Securities, located in the Heber Wells Building, 160 East 300 South, 2<sup>nd</sup> Floor, Salt Lake City, Utah. The purpose of the hearing is to establish a scheduling order and address any preliminary matters. If the Respondent fails to file an answer and appear at the hearing, the Division of Securities may hold Respondent in default, and a fine may be imposed in accordance with Utah Code Ann. § 63-46b-11. In lieu of default, the Division may decide to proceed with the hearing under § 63-46b-10. At the hearing, the Respondent may show cause, if any he has:

- a. Why Frank J. Gillen should not be found to have wilfully engaged in the violations alleged by the Division in this Order to Show Cause;
- b. Why Frank J. Gillen should not be ordered to cease and desist from engaging in any further conduct in violation of Utah Code Ann. § 61-1-1, or any other section of the Act; and
- c. Why Frank J. Gillen should not be ordered to pay a fine of twenty five thousand dollars (\$25,000) to the Division of Securities.

DATED this 2<sup>nd</sup> day of February, 2007.

  
WAYNE KLEIN  
Director, Utah Division of Securities

Approved:

  
JEFF BUCKNER  
Assistant Attorney General

J. S.

Division of Securities  
Utah Department of Commerce  
160 East 300 South, 2<sup>nd</sup> Floor  
Box 146760  
Salt Lake City, UT 84114-6760  
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**BEFORE THE DIVISION OF SECURITIES  
OF THE DEPARTMENT OF COMMERCE  
OF THE STATE OF UTAH**

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**IN THE MATTER OF:**

**FRANK J. GILLEN;**

**Respondent.**

**NOTICE OF AGENCY ACTION**

**Docket No. SD-07-0009**

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THE DIVISION OF SECURITIES TO THE ABOVE-NAMED RESPONDENT:

The purpose of this Notice of Agency Action is to inform you that the Division hereby commences a formal adjudicative proceeding against you as of the date of the mailing of the Order to Show Cause. The authority and procedure by which this proceeding is commenced are provided by Utah Code Ann. §§ 63-46b-3 and 63-46b-6 through 11. The facts on which this action is based are set forth in the foregoing Order to Show Cause.

Within thirty (30) days of the mailing date of this notice, you are required to file an Answer with the Division. The Answer must include the information required by Utah Code § 63-46b-6 (1). In addition, you are required by § 63-46b-6 (3) to state: a) by paragraph, whether you admit or deny each allegation contained in the Order to Show Cause, including a detailed explanation for any response other than an unqualified admission; b) any additional facts or documents which you assert are relevant in light of the allegations made; and c) any affirmative

defenses (including exemptions or exceptions contained within the Utah Uniform Securities Act) which you assert are applicable. To the extent that factual allegations or allegations of violations contained in the Order to Show Cause are not disputed in your Answer, they will be deemed admitted.

Your Answer, and any future pleadings or filings that should be part of the official files in this matter, should be sent to the following:

Signed originals to:

Administrative Court Clerk  
c/o Pam Radzinski  
Division of Securities  
160 E. 300 S., Second Floor  
Box 146760  
Salt Lake City, UT 84114-6760  
(801) 530-6600

A copy to:

Jeff Buckner  
Assistant Attorney General  
160 E. 300 S., Fifth Floor  
Box 140872  
Salt Lake City, UT 84114-0872  
(801) 366-0310

A hearing date has been set for Thursday, March 22, 2007, at 9:00 a.m., at the office of the Utah Division of Securities, located in the Heber Wells Building, 160 East 300 South, 2<sup>nd</sup> Floor, Salt Lake City, Utah.

If you fail to file an Answer, as set forth herein, or fail to appear at the hearing, the Division of Securities may hold you in default, and a fine and other sanctions may be imposed against you in accordance with Utah Code Ann. § 63-46b-11, without the necessity of providing you with any further notice. In lieu of default, the Division may decide to proceed with the hearing under § 63-46b-10. At the hearing, you may appear and be heard and present evidence on your behalf. You may be represented by counsel during these proceedings.

The presiding officer in this case is Wayne Klein, Director, Division of Securities.

Questions regarding the Order to Show Cause and Notice of Agency Action should be directed to the Division's attorney, Jeff Buckner, at (801) 366-0310.

DATED this 2<sup>nd</sup> day of February, 2007.

  
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WAYNE KLEIN  
Director, Division of Securities  
Utah Department of Commerce



**Certificate of Mailing**

I certify that on the 2ND day of February, 2007, I mailed, by certified mail, a true and correct copy of the Order to Show Cause and Notice of Agency Action to:

Frank J. Gillen  
13844 Boquita Dr.  
Del Mar, CA 92014

Certified Mail # 7005 18200003 7190 3877

PAM RABINUSH  
Executive Secretary